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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/804,317	03/18/2004	Kenneth Browne Kixmoeller	022-040000US	7306
33486	7590	11/30/2006	EXAMINER	
HEIMBECHER & ASSOC., LLC			BAXTER, GWENDOLYN WRENN	
P O BOX 33			ART UNIT	PAPER NUMBER
HAMEL, MN 55340-0033			3632	

DATE MAILED: 11/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/804,317

Applicant(s)

KIXMOELLER, KENNETH  
BROWNE

Examiner

Gwendolyn Baxter

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 4-6, 8-24, 28 and 29 is/are pending in the application.
- 4a) Of the above claim(s) 12-16 and 24 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8-11 and 29 is/are allowed.
- 6) ☒ Claim(s) 17-22 and 28 is/are rejected.
- 7) ☒ Claim(s) 4-6 and 23 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

This is the second Office action for application serial no. 10/804,317, Holding Device for a Cooking Container Lid, filed March 18, 2004.

***Claim Rejections -35 USC S 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless —

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 28, 17-20, and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,364,537 to Helzer. The present invention reads on Helzer as follows: Helzer teaches a device for holding an article (100) comprising a mounting base. The mounting base comprises a center section (10), a left wing section (80), a right wing section (80'), and an elongated sliding (50). The center section defines a slot (defined between 12, 14, 16). The left wing section is connected with the center section, wherein the left wing section further comprises a first retainer clip (82). The right wing section is connected with the center section, wherein the right wing section further comprises a second retainer clip (82'). The sliding member further comprises a third retainer clip (56) and the sliding member both travels within and is retained within the slot. The center section is spaced apart from both the left wing section and the right wing section. The center section is connected with the left wing section along a first edge by a first transition step (26). The center section is connected with the right wing section along a second edge by a second transition step (26). The

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first, second, and third retainer clip each further comprises a corresponding shelf and corresponding lip, wherein each corresponding shelf is connected with and generally orthogonal to the right wing section, the left wing section and the sliding member respectively. Each corresponding lip is connected with and generally orthogonal to the respective corresponding shelf. The first retainer clip is oriented at a first angle with respect to an orientation of the third retainer clip and the second retainer clip is oriented at a second angle with respect to the orientation of the third retainer clip. The first angle is equal and opposite of the second angle. The sliding member further comprises a retention member (16), wherein the third retainer clip is disposed on a first end of the sliding member and the retention member is disposed on a second end of the sliding member. The retention member is adapted to engage the mounting base to arrest the travel of the sliding member with the slot. The device is composed of a plastic or composite material (column 4, line 3+).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Helzer in view of U.S. Patent No. 4,542,876 to Hogg. Helzer teaches the limitations of the

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base claim, excluding the device being composed of a metal or metal alloy, namely stainless steel. Hogg teaches a device for holding an article being form of stainless steel and/or plastic (see column 9, lines 19-33). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have made the material used by Helzer to have incorporated the material as taught by Hogg, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

#### ***Allowable Subject Matter***

Claims 4-6 and 23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 8-11 and 29 are allowed.

#### ***Response to Arguments***

Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

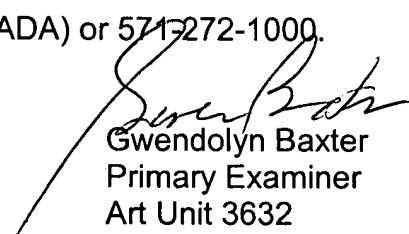
#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gwendolyn Baxter whose telephone number is 571-272-

6814. The examiner can normally be reached on Monday-Wednesday, 8:30am - 3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on 571-272-6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Gwendolyn Baxter  
Primary Examiner  
Art Unit 3632

November 22, 2006